

Remarks

Claim 42 has been amended. Claims 43-45 have been cancelled. Claims 1-42 and 46-58 are pending.

In a restriction requirement, mailed January 4, 2006, the Examiner required restriction under 35 U.S.C. §§ 121 between:

Group I - Claims 1-31, 57, and 58, drawn to chemical compounds have the imidazo[1,2-a]pyrazine core;

Group II - Claims 38-41, claims 42-45 (in part, only insofar as the claim embraces contacting cells with Group I compounds), and claims 46-51, drawn to modulating the activities of the kinases Tie-2, VEGF-R2, EphB4, and c-KIT, and also drawn to the treatment of various diseases or disorders;

Group III - Claims 42-44 (only insofar as the claim embraces contacting cells with a compound not provided for in Group I) and 56, drawn to a method of modulating the activities of the kinases Tie-2, VEGF-R2, EphB4, and c-KIT.

Group IV - Claims 52-55, drawn to a method for detecting the presence or absence of an angiogenic kinase *in vitro*.

Group V - Claims 32-36, drawn to a pharmaceutical composition and to a packaged pharmaceutical composition.

Group VI - Claim 37, drawn to a method of reducing medication error and enhancing therapeutic compliance.

The inventions of Group I and II were alleged to be related as product and process of use, and distinct because the process as claimed can be practiced with another materially different process. The inventions of Group I and IV were also alleged to be related as product and process of use, but the method of Group IV were not seen as commensurate with those of Group II because of the additional step of detection in those methods. Inventions I and V were alleged to be related as product and sub-product. The inventions of Group V and VI were alleged to be related as product and process of using. The invention of Group III was alleged to be unrelated to the other groups. Applicants respectfully disagree and traverse the restriction requirement.

THE RESTRICTION REQUIREMENT IS IMPROPER

MPEP §803 mandates two criteria for a proper restriction requirement:

“(A) The inventions must be independent (see MPEP §802.01, §806.04, §808.01) or distinct as claimed (see MPEP §806.05 - §806.05(i)); **and**

(B) **There must be a serious burden on the examiner** if restriction is required (see MPEP §803.02, §806.04(a)-§806.04(i), §808.01(a), and §808.02).” (Emphasis added.)

No such serious burden has been alleged in the Office Action, and it is Applicants’ position that no such serious burden exists. All of the claims are limited to compounds of Formula I or a form thereof, compositions comprising such compounds, or methods of their use. In other words, the methods of the invention can be practiced with no product other than a compound of Formula I or a form thereof, or a composition comprising such compound of Formula I or a form thereof. In that regard, notwithstanding the classifications into which these compounds, compositions, and methods fall, the search for provisionally elected Group I would appear of necessity also to cover the art relevant to Group II-VI as a source for novelty- or obviousness-defeating prior compositions of matter. The restriction requirement should, therefore, be withdrawn.

PROVISIONAL ELECTION

Applicants provisionally elect the subject matter of Group I - Claims 1-31, 57, and 58, drawn to chemical compounds have the imidazo[1,2-a]pyrazine core.. The right to pursue non-elected subject matter in one or more divisional applications is expressly reserved.

OBJECTION TO THE TITLE

The Examiner has objected to the title of the application under 37 C.F.R. § 1.72 as not descriptive. Applicants respectfully request that the Office hold this objection in abeyance. Applicants will amend the title upon receipt of an indication of allowability of the claims.

COMMENTS AS TO Z₁

The Office has noted a discussion of the variable Z₁ on pages 5, 19, and 20 of the specification. The Office maintains that the compounds as claimed do not include such variable and have asked Applicants to review the claims and the specification to determine whether something was omitted from the claims or included in the specification which is not germane to the claims.

Applicants thank the Office for its careful review of the subject application. The specification describes compounds of Formula I wherein Z₁ is as specified, for example, on page 5. The claims are directed to a specific embodiment of the invention wherein Z₁ is -(CR₄R₅)_m- wherein m is 0, i.e., Z₁ is a covalent bond directly linking W to R₁. For the convenience of the reader, rather than including Z₁ in the depiction of Formula I in the claims and then specifying that it is a covalent bond, Applicants have simply shown W covalently bound to R₁.


CONCLUSION

Applicants maintain that restriction is improper in the present application because examination of the compounds, compositions, and the claimed method of their use would not appear to impose an undue or serious burden on the Office's resources. Reconsideration of the restriction requirement is earnestly solicited.

Please grant any extensions of time required to enter this response and charge any additional required fees to Deposit Account No. 06-0916.

Respectfully submitted,

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